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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

June 22, 1994

VIA HAND DELIVERY

Honorable William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 93-162 - MFS Communications Company, Inc. Opposition to
Supplemental Direct Case

Dear Secretary Caton:

Enclosed for filing with the Commission are an original and seven copies of the above-referenced pleading of MFS Communications Company, Inc.

Please date-stamp the extra copy of this filing and return it in the enclosed self-addressed envelope. Any questions regarding the enclosed pleading should be addressed to the undersigned.

Respectfully submitted,



Andrew D. Lipman
Charles H.N. Kallenbach

Counsel for MFS Communications
Company, Inc.

Enclosures

cc: Jonathan E. Canis

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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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JUN 22 1994

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF SECRETARY

In the Matter of)	
)	
Local Exchange Carriers' Rates)	
Terms, and Conditions for)	CC Docket No. 93-162
Expanded Interconnection for)	
Special Access)	

MFS COMMUNICATIONS COMPANY, INC.
OPPOSITION TO SUPPLEMENTAL DIRECT CASE

I. INTRODUCTION

MFS Communications Company, Inc. ("MFS"), by its undersigned counsel, and pursuant to the Commission's Supplemental Designation Order and Order to Show Cause,^{1/} respectfully submits this Opposition to the Supplemental Direct Case filed by the Bell Atlantic Telephone Companies ("Bell Atlantic").^{2/}

Bell Atlantic has created a smokescreen to obfuscate its planned implementation of prohibited individual case basis ("ICB") arrangements.^{3/} Although Bell Atlantic is now calling its charges for central office preparation under physical expanded interconnection "time and materials charges," in reality it is simply another form of ICB pricing in which

^{1/} Supplemental Designation Order and Order to Show Cause, DA 94-556 (released May 31, 1994) ("Supplemental Order").

^{2/} Supplemental Direct Case of Bell Atlantic, CC Docket No. 93-162 (June 15, 1994) ("Direct Case").

^{3/} Bell Atlantic was previously directed to eliminate ICB charges in its collocation tariffs. Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access, 8 FCC Rcd 4589 (1993) ("Bell Atlantic Order").

Bell Atlantic may establish excessive charges or discriminate among similarly situated interconnectors at will. Given this monopolist's past history of unreasonable discrimination against, and overcharges of, potential competitors, the Commission should clear the air and strike down Bell Atlantic's proposed time and materials charges as a clear violation of the Commission's Expanded Interconnection Order,^{4/} the Communications Act, and Commission Rules.

II. ARGUMENT

A. The Tariffed Time and Materials Charges are Equivalent to ICB Arrangements and Violate the Commissions' Rules

Although Bell Atlantic proffers the appellation "time and materials charges" instead of ICB pricing, the two charges are functionally indistinguishable. Both methods of charging for central office construction affix no sum certain to construction and installation costs and would allow the Tier 1 LECs to charge widely divergent rates for identical collocation arrangements in the same telephone company central office. Such divergent charges are unreasonably discriminatory under the Communications Act, and their use for expanded interconnection have been prohibited expressly by the Commission.

^{4/} Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992) ("Expanded Interconnection Order"), recon., 8 FCC Rcd 127 (1992); further modified on recon. 8 FCC Rcd 7341 (1993); partially vacated sub nom., Bell Atlantic v. F.C.C., No. 92-1619 (D.C. Cir. June 10, 1994).

Bell Atlantic even admits that its collocation construction costs will "vary widely over time, because of such variables as the availability of labor and the costs of materials."^{5/} The Commission, however, frequently has stated that unit charges for labor and material should be uniform in each central office.^{6/} Bell Atlantic's time and materials rate structure thus patently violates the Commission's direct order, and so must be rejected.

B. The Tariffed Time and Materials Charges are Unreasonably Discriminatory, Create Unfair Barriers to Entry and Would Require Case-by-Case Commission Review

As the functional equivalent of ICB pricing, time and materials charges would unfairly discriminate against interconnectors. LECs like Bell Atlantic have the incentive and the ability to disadvantage competitors by establishing artificially high rates for interconnection construction, or by discriminating against similarly situated interconnectors. Furthermore, for the Commission to properly insure that collocation construction rates are reasonable, the Common Carrier Bureau would have to review each and every time and materials charge on an ad hoc basis.

Bell Atlantic provides the basic blueprint for how it would develop discriminatory collocation construction charges. Bell Atlantic states that when it receives a potential interconnection request, the central office construction charge is calculated by a "multi-

^{5/} Direct Case at 4.

^{6/} Expanded Interconnection Order at 7441-42; Supplemental Order at 2-3, ¶ 3. The Commission definitively has concluded that time and materials charges for central office construction reasonably should be standardized within each central office. Supplemental Order at 3, ¶ 4.

departmental internal team" that solicits bids from contractors for the work and prepares a final estimate. Not surprisingly, Bell Atlantic nowhere indicates that it would be obligated to provide the lowest cost and highest quality final estimate.^{2/} It is not out of the realm of possibility that Bell Atlantic would use as its selection criteria for final estimates the lowest quality and highest cost contractor bid. After all, time and materials charges inherently endow LECs with complete control over collocation construction costs.

The need for protection against such unreasonable pricing behavior is underscored by Bell Atlantic's record of attempting to impose excessive interconnection rates on potential competitors. In the Bell Atlantic Order, the Commission found that Bell Atlantic's (and other LECs') expanded interconnection tariffs raised significant questions of lawfulness and ordered tariff revisions. The Commission ordered that LECs adjust their interconnection rate elements by certain Rate Adjustment Factors ("RAFs") to eliminate the inclusion of excessive overhead loadings in collocation rates. The RAFs varied depending upon the level of overcharging attributed to a particular LEC. Bell Atlantic's RAFs were among the highest of any Tier 1 LEC, indicating that Bell Atlantic had engaged in some of the most severe overcharges. Bell Atlantic was found to have overcharged almost 70 percent for certain rate elements. In a subsequent Order in this proceeding, the Commission, inter alia, found that Bell Atlantic's overhead loadings were unjust and unreasonable. See Local Exchange

^{2/} Bell Atlantic's proposed limits on the amount by which the charges to a collocater may deviate from the pre-construction estimate are therefore utterly irrelevant and self-serving. Direct Case at 5-6. If Bell Atlantic chooses the final bid to submit to the collocater, a one percent, ten percent or twenty percent deviation limit from that estimate does not provide any protection against the likely possibility of initial estimate overcharges.

Carriers' Rates, Terms and Conditions for Expanded Interconnection for Special Access, 8 FCC Rcd 8344 (1993).

Moreover, substantial evidence exists that Bell Atlantic will attempt to impose excessive charges specifically for central office preparation. When Bell Atlantic first filed its expanded interconnection tariff, it proposed to set its rates for central office preparation on an ICB basis. In opposing that pricing scheme, MFS provided two written estimates obtained from Bell Atlantic for intrastate interconnection arrangements that were then being discussed. The Bell Atlantic proposals ranged from \$127,980 to \$165,689 -- grossly in excess of averaged, tariffed rates for comparable services filed by the other LECs.^{8/} Given its track record of establishing excessive interconnection charges, it is abundantly clear that Bell Atlantic must be denied the enormous pricing flexibility conferred by its time and materials-based rate structure.

In addition to setting excessive rates, Bell Atlantic's rate scheme allows it to establish differing rates for similarly situated interconnectors within the same Bell Atlantic central office. Such discrimination directly violates Section 202 of the Communications Act, and could constitute a significant barrier to entry by potential competitors into Bell Atlantic's central offices in particular, and a barrier to entry to local competitors in general. Such barriers to entry sharply contrast with the Commission's goal of increasing competition in the telecommunications marketplace.

^{8/} MFS Communications Company, Inc., Petition to Reject, or Alternatively, Suspend and Investigate Portions of Proposed Collocation Tariffs, filed in CC Docket No. 91-141 on March 17, 1993, at page 31.

Perhaps the most unreasonable aspect of Bell Atlantic's rate scheme is its potential to generate litigation. Because Bell Atlantic would establish rates on an ad hoc basis, interconnectors that believe they face unreasonably discriminatory or excessive rates would be compelled to seek Commission review of each and every collocation construction estimate to determine whether it was fair and reasonable. Such an ad hoc approach to ratemaking therefore imposes unreasonable burdens on the resources of the Commission and of interconnectors, and compels rejection of the Bell Atlantic approach. For all these reasons, Bell Atlantic's time and materials rate scheme must be rejected.

C. Bell Atlantic, Like the Majority of Tier 1 LECs, Must Establish Averaged Rates for Expanded Special Access Interconnection

Most LECs in this proceeding have formulated averaged rates for interconnection construction costs without complaint. Bell Atlantic provides no basis to distinguish its circumstances from the vast majority of Tier 1 LECs that have established averaged rates as the Commission has ordered. As a result, the Commission should insist that Bell Atlantic establish averaged interconnection construction rates.

Bell Atlantic opines that its experience with expanded interconnection has shown that "each installation is unique."^{9/} While different central offices may indeed have their own idiosyncracies, however, such disparities do not distinguish Bell Atlantic from any other carrier, whose central offices or operating nodes are similarly "unique." Moreover, any idiosyncracies among Bell Atlantic's central offices -- whether environmental factors, distance of the main distribution frame from the cable vault, or local code requirements --

^{9/} Direct Case at 4.

would similarly affect any service provided out of those central offices, and would not impact interconnection exclusively.

Bell Atlantic adds that collocation construction pricing differs from the LEC's typical pricing of new services:

In the usual case, Bell Atlantic either uses its own personnel and procures its own materials in offering the service or uses contractors under long-term arrangements at standard prices. As a result, Bell Atlantic has a greater degree of control over the labor rates and material prices and is able to file a justified tariff rate.^{10/}

Remarkably, Bell Atlantic does not indicate why it cannot use its own personnel and procure its own materials in providing collocation construction, beyond saying that it uses outside contractors uniformly in the preparation of collocation space.^{11/} Similarly, Bell Atlantic provides no justification for not using contractors under long-term arrangements at standard prices. Obviously, the vast majority of LECs were able to take into account the special circumstances surrounding individual central office interconnection construction in their average pricing. Because Bell Atlantic provides no substantive grounds for its inability to calculate and tariff such average pricing, its currently tariffed rate structure must be rejected.

^{10/} Id.

^{11/} Direct Case at 3.

III. CONCLUSION

As demonstrated herein, the time and materials charges of Bell Atlantic's expanded interconnection tariff are unjust and unreasonable. MFS therefore urges the Commission to reject Bell Atlantic's clear attempt to circumvent the Commission's rules and require Bell Atlantic to file fully averaged rates for preparation of central office space for physical interconnection.

Respectfully submitted,



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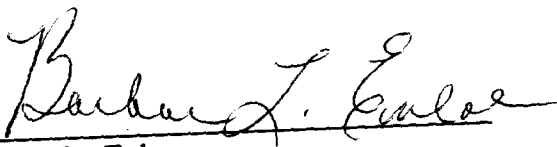
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Attorneys for
MFS COMMUNICATIONS COMPANY,
INC.

Dated: June 22, 1994

CERTIFICATE OF SERVICE

I, Barbara L. Enloe, hereby certify that I have on this 22nd day of June, 1994, sent via U.S. First Class Mail, postage prepaid,* or Hand Delivery, a copy of the foregoing Opposition to Supplemental Direct Case, filed this date in CC Docket No. 93-162 filed this date with the Federal Communications Commission, to the persons listed on the attached service list.


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